

of § 208.3(c)(5) shall be returned to the applicant.

(b) Immigration Judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served notice of referral to exclusion proceedings under part 236 of this chapter, or served an order to show cause under part 242 of this chapter, after a copy of the charging document has been filed with the Immigration Court. The immigration judge shall make a determination on such claims. In cases where the adjudication of an application has been referred in accordance with § 208.14, that application shall be forwarded with the charging document to the Immigration Court by the Asylum Office. As a matter of discretion, the immigration judge may permit the applicant to amend the application, but any delay caused by such a request shall extend the period within which the applicant may not apply for employment authorization in accordance with § 208.7(a).

[55 FR 30680, July 27, 1990, as amended at 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995; 60 FR 44264, Aug. 25, 1995]

### § 208.3 Form of application.

(a) An application for asylum or withholding of deportation shall be made on Form I-589 (Application for Asylum and for Withholding of Deportation) and shall be submitted, together with any additional supporting material, in triplicate, meaning the original plus two copies. The applicant's spouse and children as defined in section 101 of the Act, 8 U.S.C. 1101(a)(35) and 1101(b)(1), may be included on the application if they are in the United States. One additional copy of the principal applicant's I-589 must be submitted for each dependent listed on the principal's application. An application shall be accompanied by one completed Form FD-258 (Fingerprint Card) for every individual included on the application who is 14 years of age or older. Forms I-589 and FD-258 are available from the INS and from the Immigration Court. The application for asylum or withholding of deportation also shall be accompanied by a total of two photographs of each applicant and two photographs of each dependent included on the application.

(b) An application for asylum shall be deemed to constitute at the same time an application for withholding of deportation, pursuant to §§ 208.16, 236.3, and 242.17 of this chapter.

(c) The application (Form I-589) shall be filed under the following conditions and shall have the following consequences, as shall be noted in the instructions on the application:

(1) Information provided in completing the application may be used as a basis for the institution of, or as evidence in, exclusion proceedings in accordance with part 236 of this chapter or deportation proceedings in accordance with part 242 of this chapter;

(2) Information provided in the application may be used to satisfy the burden of proof of the INS in establishing the applicant's deportability under part 242 of this chapter;

(3) Mailing to the address provided by the applicant on the application or the last change of address form (INS Form AR-11), if any, received by the INS shall constitute adequate service of all notices or other documents, except a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-122), service of which is governed by § 235.6 of this chapter, and an Order to Show Cause (Form I-221), service of which is governed by section 242B(a)(1) of the Act, 8 U.S.C. 1252b(a)(1);

(4) The applicant and anyone other than an immediate relative who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature is evidence that the applicant is aware of the contents of the application. A person other than an immediate relative who assists the applicant in preparing the application also must provide his or her full mailing address;

(5) An application for asylum and for withholding of deportation that does not include a response to each of the questions contained in the Form I-589, that is unsigned, or that is unaccompanied by the required materials specified in paragraph (a) of this section is incomplete. An application that is incomplete shall be returned by mail to the applicant within 30 days of the receipt of the application by the INS. The filing of an incomplete application shall not commence the 150-day period

after which the applicant may file an application for employment authorization in accordance with § 208.7(a)(1). If an application has not been mailed to the applicant within 30 days, it shall be deemed complete; and

(6) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act, 8 U.S.C. 1324c.

[55 FR 30680, July 27, 1990, as amended at 56 FR 50812, Oct. 9, 1991; 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995]

#### § 208.4 Filing the application.

If no prior application for asylum or withholding of deportation has been filed, an applicant shall file any initial application according to the following procedures:

(a) *With the Service Center by mail.* Except as provided in paragraphs (b) and (c) of this section, applications for asylum or withholding of deportation shall be filed directly by mail with the Service Center servicing the Asylum Office with jurisdiction over the place of the applicant's residence or, in the case of an alien without a United States residence, the applicant's current lodging or the land border port of entry through which the alien seeks admission to the United States. The addresses of the Service Centers shall be made available through the local INS Information Unit. Upon receipt of the application, except in the case of an alien who has been convicted of an aggravated felony, the Service Center shall forward a copy of the application to the Department of State.

(b) *With the District Director.* In the cases of:

(1) Stowaways who are presented to the Service,

(2) Crewmen who affirmatively approach a Service officer in order to file for asylum, and

(3) Other aliens seeking admission at a seaport or airport of entry, applications for asylum or withholding of deportation shall be accepted by the District Director having jurisdiction over the port of entry.

The District Director shall immediately forward the application to the

asylum office with jurisdiction over that port of entry.

(c) *With the Immigration Judge.* Initial applications for asylum or withholding of deportation are to be filed with the Immigration Court in the following circumstances (and shall be treated as provided in part 236 or 242 of this chapter):

(1) *During exclusion or deportation proceedings.* If exclusion or deportation proceedings have been commenced against an alien pursuant to part 236 or 242 of this chapter, an initial application for asylum or withholding of deportation from that alien shall be filed thereafter with the Immigration Court.

(2) *After completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings have been completed, an initial application for asylum or withholding of deportation shall be filed with the Immigration Court having jurisdiction over the prior proceeding in conjunction with a motion to reopen pursuant to 8 CFR 3.8, 3.22 and 242.22 where applicable.

(3) *Pursuant to appeal to the Board of Immigration Appeals.* If jurisdiction over the proceedings is vested in the Board of Immigration Appeals under part 3 of this chapter, an initial application for asylum or withholding of deportation shall be filed with the Immigration Court having jurisdiction over the prior proceeding in conjunction with a motion to remand or reopen pursuant to 8 CFR 3.2 and 3.8 where applicable.

(4) Any motion to reopen or remand accompanied by an initial application for asylum filed under paragraph (b) of this section must reasonably explain the failure to request asylum prior to the completion of the exclusion or deportation proceeding.

[55 FR 30680, July 27, 1990, as amended at 56 FR 50812, Oct. 9, 1991; 59 FR 62298, Dec. 5, 1994; 60 FR 34090, June 30, 1995]

#### § 208.5 Special duties toward aliens in custody of the Service.

(a) When an alien in the custody of the Service requests asylum or withholding of deportation or expresses fear of persecution or harm upon return to his country of origin or to agents thereof, the Service shall make available the appropriate application forms